

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of
Telecommunications and Energy on its
own motion, pursuant to G.L. c. 159,
§§ 12 and 16, into the collocation security
policies of Verizon New England, Inc.
d/b/a Verizon Massachusetts

D.T.E. 02-8

REPLY BRIEF
OF
QWEST COMMUNICATIONS CORPORATION

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In response to the Initial Brief of Verizon Massachusetts (“Verizon”), in the above-captioned proceeding, Qwest Communications Corporation (“Qwest”) submits its Reply Brief to the Massachusetts Department of Telecommunications and Energy (“Department”) to reiterate that sanctioning any portion of Verizon’s proposal to supplement the reasonable security measures currently available would be arbitrary and capricious based on the record before the Department.

INTRODUCTION

On August 9, 2002, various parties¹ to the aforementioned proceeding submitted initial briefs to the Department regarding its investigation to examine the effectiveness of the pro-competitive collocation security policies that the Department had previously authorized Verizon to employ in its central offices (“COs”) to assure network reliability.² Qwest in its Initial Brief

¹ In addition to Qwest and Verizon, those parties included Allegiance Telecom of Massachusetts, Inc. (“Allegiance”), AT&T Communications of New England (“AT&T”), Sprint Communications Company L.P. (“Sprint”), WorldCom Inc. (“WorldCom”), and Covad Communications Company (“Covad”).

² *Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12 and 16, into the collocation security policies of Verizon New England, Inc. d/b/a Verizon Massachusetts*, D.T.E. 02-8, Vote and Order to Open Investigation (rel. Jan. 24, 2002)(“*Order*”); *see also Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the M.D.T.E. Nos. 14 and 17 filed with the Department by New England Telephone Telegraph Company d/b/a Bell Atlantic-Massachusetts*, D.T.E. 98-57, Phase I, Order (2000)(“*Phase I Order*”) at 24-39, 59-62, on recon., Order on Motions for Reconsideration (2000)(“*Reconsideration Order*”) at 6-16, 66.

expressly revealed how the unsubstantiated changes that Verizon proposed to its security procedures are inadequate to address the “heightened security concerns after the events of September 11, 2001,”³ and in violation of Verizon’s statutory obligations under the Telecommunications Act of 1996 (“1996 Act”) as implemented by the Department, as well as Federal Communications Commission (“FCC”).

Specifically, restricting collocators to only virtual collocation contravenes Verizon’s obligations pursuant to Section 251(c)(6) of the 1996 Act,⁴ whether accomplished through prematurely exhausting the space available for physical collocation with unconditional segregation and separation practices,⁵ or ubiquitously confining collocators to only virtual collocation arrangements in any central office.⁶ In addition, Qwest explained in its Initial Brief that not only does Verizon have specific statutory and regulatory obligations, but also a responsibility to the public to maintain the security of the network in a pro-competitive manner.⁷

Verizon choosing to ignore its regulatory obligations and responsibilities cannot excuse Verizon from those obligations and responsibilities, and in turn legitimize the abolition of those statutory obligations by the Department. Verizon in its Initial Brief provides no factual or legal explanation of how its proposal would “adequately protect the telecommunications network and facilities in light of heightened security concerns following the September 11th terrorist attacks in New York City and Washington, D.C.”⁸ Instead, Verizon merely set forth the inaccurate assumption that only collocators can threaten network security in attempting to support its proposal eliminating the right of collocators to access the CO. In an attempt to support this

³ *Order* at 1.

⁴ Qwest Initial Brief at 16.

⁵ *Id.* at 11-15; Transcript at 142.

⁶ *Id.* at 15-19.

⁷ *Id.* at 23-25.

faulty assumption, Verizon selectively presented fragments of the overall data that an incumbent carrier should have available with respect to security, while fundamentally misstating its unambiguous state and federal regulatory obligations.

The factual evidence and legal arguments presented by Verizon in this proceeding do not satisfy its burden to demonstrate to the Department that additional measures are justified for securing its central offices. Accordingly, the Department should reject Verizon's proposal in its entirety, and order Verizon to withdrawal the additional security measures proposed on July 2, 2002 until Verizon has met its burden. Instead, Qwest again urges the Department to ensure that Verizon utilizes the reasonable security measures that Verizon currently has the regulatory authority, the contractual right and the cost recovery to provide; and that all carriers employ the definitive guidelines established by the national collaboratives as the most proficient means for heightening security at the central office without unduly burdening competition in Massachusetts.

I. VERIZON'S PROPOSAL IS BASED ON ERRONEOUS APPLICATION OF LAW

Verizon's regulatory obligations at the state and federal level to demonstrate the necessity of its proposed "security" measures are clear.⁹ Without any demonstration of the need for the proposed measures, much less the implications of imposing such measures, Verizon requests authority from the Department to: (1) prevent access to the personnel of other carriers in all Massachusetts central offices through segregation, even if such segregation requires relocation of collocators' equipment, construction of separation entrances or transition of arrangements to virtual collocation; (2) eliminate collocators' rights to physically collocate equipment in some

⁸ Verizon Initial Brief at 3.

⁹ Qwest Initial Brief at 4-11.

uncertain number of COs deemed to be “critical”; and (3) confine other carriers to virtual collocation, or else require escorts for physical collocation, in remote terminal premises.¹⁰

As Qwest explained in its Initial Brief, in order to authorize Verizon’s proposal, the Department must conclude that the proposal satisfies Verizon’s statutory and regulatory obligations. In Massachusetts, the Department expressly explained that “Verizon has the burden to show that the additional security measures provide a necessary security benefit to justify added costs imposed on CLECs.”¹¹ At the federal level, the FCC has expressly found that since “allow[ing] an incumbent to require separation of equipment or separate entrances in all cases, regardless of the potential effect on competition, would fail to properly balance the statute’s competing interests”,¹² Verizon has the burden to prove to the state that its proposal does not impose undue costs or delay upon a competing carriers ability to compete with Verizon.¹³ In addition, the FCC concluded that “[a]lthough, as Verizon points out, virtual collocation is available where separate physical collocation space is exhausted, section 251(c)(6) establishes a clear preference for physical over virtual collocation – permitting an incumbent LEC to substitute the latter for the former *only if* the incumbent ‘demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.’”¹⁴

¹⁰ Verizon Initial Brief at 6-7.

¹¹ D.T.E. 98-57, *Reconsideration Order* at 13; *see also Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the M.D.T.E. Nos. 14 and 17 filed with the Department by New England Telephone Telegraph Company d/b/a Bell Atlantic-Massachusetts*, D.T.E. 98-57, Phase I-B, *Order* (rel. Mar. 24, 2001)(“*Phase I-B Order*”) at 55-56 citing Phase I Order at 15-16.

¹² *Collocation Remand Order*, ¶ 100.

¹³ *Id.*, ¶ 102.

¹⁴ *Id.*, ¶ 101 citing 47 U.S.C. § 251(c)(6).

A. Verizon Blatantly Disregarded its Regulatory Obligation to Demonstrate that its Proposed “Security” Measures are Necessary.

Verizon has not demonstrated to the Department that the proposal justifies the additional costs or delay to collocators, or that physical collocation is not practical for technical reasons.¹⁵ Verizon claims that its proposal will reduce network harm but has not demonstrated any potential network harm, much less how its proposal would reduce any potential network harm. Verizon failed to conduct any actual analysis of the potential threats to central office security, especially those associated with terrorist activity.¹⁶ Consequently, Verizon provided no evidence that the measures currently in place in its central offices are not adequate to address any potential threats to the network.¹⁷ Verizon also declined to offer any proof that the “security” measures it proposes will effectively enhance security.¹⁸

Since Verizon failed to provide any analysis, the Department must reject Verizon’s proposal for failure to satisfy its burden of proving to the Department that its proposal provides a necessary security benefit to justify the financial and operational burdens on collocators. The legal precedent is clear—Verizon’s concerns are *not* legitimate. It is indisputable that Verizon has “incentive to overstate security concerns so as to limit physical collocation arrangements and discourage competition.”¹⁹ The record is clear—Verizon’s concerns are *not* substantiated. First, Verizon repeatedly claims that its proposed “security” measures should be authorized because all of the security measures currently available fail to “prevent” security breaches,²⁰ however

¹⁵ Qwest Initial Brief at 4-11.

¹⁶ *Id.* at 7-11.

¹⁷ *Id.* at 7-11.

¹⁸ Transcript at 60.

¹⁹ *Collocation Remand Order*, ¶102; *see also* Qwest Initial Brief at 12.

²⁰ Verizon Initial Brief at 1, 5, 30, 43, 48, 49, 50, 51.

Verizon admits that its proposed measures will also fail to “prevent” security breaches.²¹

Second, if it were true, as Verizon claims, that there is no change from current practices,²² then Verizon’s proposal could not logically provide any benefit in securing the CO. Third, the record unequivocally demonstrates that Verizon personnel are the predominant cause of network harm, and thus its proposed measures to eliminate collocator access would have no impact in curtailing the behavior of the personnel in COs on behalf of Verizon.²³ There is clearly no “necessary security benefit”, therefore Verizon has not justified the additional costs or delays it seeks to impose upon collocators.²⁴

Verizon also failed to satisfy its burden to demonstrate to the Department that the general application of segregation, separation or virtual collocation is justified in accordance with the FCC regulations. In fact, Verizon readily admitted that its proposal is “contrary to the FCC conditions”.²⁵ It is important to note that Verizon does not have an absolute right to unconditionally impose segregation and separation measures upon collocators in its central offices.²⁶ First, though claiming that there are no costs associated with its proposal,²⁷ Verizon explains that all additional costs associated with its proposal should be borne by the collocators.²⁸ Verizon has the analysis backwards. If there are additional costs, then Verizon cannot use segregation or separation as security measures. Second, the significant decrease in

²¹ Verizon Surrebuttal Testimony at 6. “Verizon MA does not contend that its security proposal will prevent all attacks by terrorists against telecommunications facilities or efforts by misguided employees, collocators, or their contractors or vendors to harm those facilities from within.”

²² Verizon Initial Brief at 36 (“Verizon would maintain its current policy”); *Id.* at 37 (“this longstanding Verizon MA practice”); Verizon Surrebuttal Testimony at 7 (“Verizon MA’s proposal is not a radical change from current practice”); Transcript at 33 (“this is not really a change”); *Id.* at 35 (“that’s not a change from our existing policies”); *Id.* at 228 (“So I don’t see that as very much of a change.”).

²³ Qwest Initial Brief at 7-8.

²⁴ Verizon Initial Brief at 10; *see also* Verizon Testimony at 41; AL-VZ-1-22; Transcript at 266-268.

²⁵ Verizon Testimony at 26.

²⁶ Qwest Initial Brief at 11-15; Verizon Initial Brief at 11-12.

²⁷ Verizon Initial Brief at 25, 33.

the provisioning interval when Verizon was ordered to provide cageless arrangements in addition to caged physical collocation proves that collocators will experience delay in obtaining collocation arrangements under Verizon's proposal. Third, the record demonstrates how the security measures previously sanctioned by the Department are practical to secure physical collocation from a technical perspective.²⁹ Therefore, pursuant to the FCC regulations, the Department should not allow Verizon to implement segregation, separation or virtual collocation as security measures.

B. Reverting to Illegal Security Practices Predating the Introduction of Real Competition into the Marketplace is Unacceptable.

Without any basis in the existing law, Verizon points to security measures that are no longer legal or appropriate. In support of its proposal to require virtual collocation and an escort requirement, Verizon suggest the Department revert back to its pre-competition regulatory environment. Initially, Verizon refers to the Department's decision in the Covad Arbitration in 1998.³⁰ Yet, in response to the negative impact that the Covad Arbitration Order had on competition, the Department in 1999 reversed its findings by requiring Verizon to offer the alternative collocation arrangements, and pro-competitive security measures to "reduce significantly the existing impediments to obtaining interconnection and access to UNEs from [Verizon] through collocation."³¹

Since the Department's reversal in 1999, competitors have grown from having "less than 2% of the local service market" in Massachusetts in 1998,³² to serving 15% of local customers in

²⁸ *Id.* at 33, n. 43; Verizon Testimony at 41; AL-VZ-1-22; Transcript at 266-268.

²⁹ Qwest Initial Brief at 18-23.

³⁰ Verizon Initial Brief at 31-32.

³¹ Teleport Petition, D.T.E. 98-58, at 26 n. 20 (1999).

³² FCC Local Competition, Industry Analysis Division, Common Carrier Bureau (December 1998) <www.fcc.gov/wcb> at 9, Tables 3.1, 3.3.

Massachusetts in 2002.³³ The Department also recently realized that “[c]ontinued implementation of pro-competition policies adopted . . . since 1998” has helped “to achieve one of the highest levels of local telephone competition nationwide.”³⁴ If the Department sanctions Verizon’s proposal to eliminate the choice of physical collocation, the competitive environment in Massachusetts—upon which Verizon obtained Section 271 authority to provide long distance service—will ultimately return to an environment where central offices are artificially and prematurely exhausted to prohibit any further physical collocation,³⁵ and thus limiting any future growth of competitors’ business.

Furthermore, Verizon suggests that the only acceptable alternative for virtual collocation would be requiring escorts.³⁶ The FCC regulations are unambiguous in that Verizon “must allow collocating parties to access their collocated equipment 24 hours a day, seven days a week, *without requiring either a security escort of any kind or delaying a competitor's employees' entry into the incumbent LEC's premises.*”³⁷ Escorts violate Verizon’s obligations under Section 251(c) of the 1996 Act. Verizon urges the Department to allow Verizon to defy its statutory obligations because Verizon imposes such escorts requirements for its cleaning crew, plumbers, electricians and painters.³⁸ The parity of security measures cannot situate collocators in the same category as cleaning crew, plumbers, electricians and painters. Cleaning crew, plumbers, electricians and painters are not a protected class under the 1996 Act, and more importantly, do not compete with Verizon. Not only are escorts no longer deemed reasonable security measures

³³ FCC Local Telephone Competition: Status as of December 31, 2001, Industry Analysis and Technology Division, Wireline Competition Bureau (July 2002) <www.fcc.gov/wcb> (“2002 FCC Local Competition Report”) at Table 7.

³⁴ Massachusetts Department of Telecommunications and Energy, 2001 Annual Report <<http://www.state.ma.us/dpu/annualreport2001.pdf>>.

³⁵ Qwest Initial Brief at 24-25; Transcript at 142.

³⁶ Verizon Initial Brief at 7, 35, 38-39.

³⁷ 47 C.F.R. Section 51.323(i).

from a regulatory standpoint, but an escort requirement contradicts Verizon's assumption upon which its proposal is based.³⁹ Thus, an escort requirement would violate Verizon's statutory and regulatory obligations.

Verizon's blatant disregard of its statutory and regulatory obligations over the years, as well as its refusal to exercise its current regulatory and contractual authority, cannot be the basis for allowing Verizon to revert back to archaic practices that stunted competitive growth in its infancy.

II. VERIZON'S PROPOSAL IGNORES LOGIC WHILE FOCUSING ON INAPPROPRIATE, INACCURATE ASSUMPTIONS.

In its Initial Brief, Verizon neglected to recommend security enhancements that satisfy either its legal burden of demonstrating the need for such drastic "security" measures, or its regulatory obligation to ensure network security. Specifically, Verizon ignored its responsibility to conduct the proper analysis to ensure the reliability of the public network. Verizon also failed to efficiently and effectively implement and enforce the pro-competitive measures available for securing its central offices. Accordingly, there is no basis upon which the Department can sanction any portion of Verizon's proposal.

A. Verizon Ignored its Responsibility to Conduct the Proper Analysis to Ensure the Reliability of the Public Network.

Although Verizon failed to perform the appropriate analysis, Verizon certainly was aware of how to properly analyze what potential risk might attach to its central office security practices, including those associated with terrorist activity, and how to address those potential threats. Verizon knew the proper security analysis, Verizon had access to the relevant security information, and Verizon was aware that, if it chose not to perform the proper analysis, at least

³⁸ Verizon Initial Brief at 26; Transcript at 139.

³⁹ See *infra* II.C.

the federal collaboratives would work to thoroughly safeguard the network. Verizon admits that it did not use any of these devices in formulating its proposal, and therefore they “don’t know how effective [its proposal] would be.”⁴⁰ Alternatively, Verizon attempts to support its proposal with bald, antiquated assertions that keeping collocators out of central offices will ensure the reliability of the network.

Verizon has access to the data upon which it could have accurately assessed the threats, but Verizon chose not to use that data. Verizon admits that it has access to all of the incident and outage reports recording the security incidents throughout the entire central office in every Massachusetts central office location. Verizon chose not to review these incident and outage reports when making its determination that collocators were the root of all security breaches. This, of course, is quite apparent since the record reveals that Verizon personnel are the primary cause of disruptions to the network reliability.⁴¹ If Verizon had reviewed the available reports, it would have realized that its proposal to exclude collocators from Verizon’s central office, or limiting their access in a central office, would have not curtailed any of the actual service-disrupting incidents occurring in Massachusetts.

Verizon personnel have cause substantially more service outages affecting millions of more customers than any incident caused by a collocator in a central office. Despite the data that Verizon did produce—though clearly lacking any recognition of the numerous incidents where Verizon personnel have harmed Verizon’s network,⁴² Verizon can identify only *one* occasion—though not in Massachusetts—where actions of a CLEC resulted in an outage affecting approximate 9000 customers. Though not downplaying the seriousness of that one occasion in a

⁴⁰ Transcript at 60.

⁴¹ Qwest Initial Brief at 8; Transcript at 749-753.

⁴² Qwest Initial Brief at 8.

state on the opposite side of the country, it is important to put it into perspective. One CLEC incident *not* in Massachusetts is infinitely less detrimental to Massachusetts customers than the 3.4 million customers effected by outages caused by Verizon personnel in Massachusetts alone over the last three years that were required to be reported to the FCC.⁴³ The actual number of Massachusetts consumers affected by the service-disrupting behavior of Verizon personnel is, in fact, certainly higher than the 3.4 million, but Verizon did not provide the data necessary to make such a determination.⁴⁴ Nonetheless, it also important to note that “there’s not a single incident of a major outage that has been reported to the FCC in Massachusetts that’s attributable to the presence of a CLEC collocated in their central office.”⁴⁵ Thus, the record does not support Verizon’s proposal.

At the very least, if Verizon was to neglect its responsibility to perform an analysis that would have actually resulted in a proposal that would heightened network reliability, Verizon should have acknowledged the efforts of the industry collaborations occurring at the federal level to properly analyze what potential risk might attach to central office security practices, including those associated with terrorist activity, and how to address those potential threats.⁴⁶ Verizon was aware that the collaborations were ongoing, not to mention that their focus was the heightening of network security in light of the September 11th attacks. Verizon not only failed to acknowledge the existence of the collaboratives in their proposal, but asked the Department to

⁴³ Record Request DTE-VZ-3.

⁴⁴ Qwest Initial Brief at 8.

⁴⁵ Transcript at 586.

⁴⁶ CHARTER OF THE NETWORK RELIABILITY AND INTEROPERABILITY COUNCIL (Jan. 2, 2002).

According to its current Charter, the primary objective in this term of the Council is to “assess vulnerabilities in the public telecommunications networks”, and “determine how best to address those vulnerabilities to prevent disruptions that would otherwise result from terrorist activities”. NRIC plans to conduct a survey of *all* of the carriers current practices, and issue a report by the end of 2002 that identifies the security problems, describes the best practices of the carriers, and supply checklists to be followed to prevent disruptions of the public telecommunications network.

ignore the collaborative processes at hand, and to re-litigate when discrepancies arise between the state regulations and the federal guidelines, which are expected to be released by the end of 2002.⁴⁷ As Qwest explained, the Department should not jeopardize network security by allowing such discrepancies to occur, as industry collaborations allow the free-flowing exchange of ideas between the interested parties nationwide needing to safeguard the telecommunications network. Accordingly, Qwest urges the Department to defer to the industry collaboratives in setting appropriate measures to resolving reasonably foreseeable circumstances to assure optimal reliability of the public telecommunications networks.

B. Verizon's Random Implementation and Enforcement of the Pro-Competitive Measures Available for Securing its Central Offices Makes Their Application Impractical and Ineffectual.

The remaining factor that Verizon refused to take into consideration when designing its proposal to request authority to impose anti-competitive measures on collocators was the effectiveness—or lack thereof—of the implementation and enforcement of the security practices that the Department has authorized as pro-competitive measures. Verizon understands the significant role that lax enforcement of security policies can play, as Verizon recognized the role it played in the events of September 11th.⁴⁸ Nonetheless, Verizon has failed to implement the available security measures properly, and enforce the measures completely and even-handedly.⁴⁹

1. Verizon did not deploy the available security measures appropriately.

Verizon baldly asserts that none of the existing security measures are effective.⁵⁰ If such bald assertions had any validity, then there is no explanation why a significant majority of businesses use these same types of measures to secure their businesses and protect their

⁴⁷ Verizon Surrebuttal Testimony at 31-32.

⁴⁸ Verizon Initial Brief at 4.

⁴⁹ Qwest Initial Brief at 19-23.

⁵⁰ Verizon Initial Brief at 1, 5, 30, 42-54.

employees and customers, such as airlines, financial institutions, public transportation, not to mention state governmental agencies. The logical reason why so many business choose these security measures is that the only alternative is to prohibit access by employees and customers. Verizon, of course, chooses to prohibit access,⁵¹ in lieu of any other pro-competitive security measures available.

For example, Verizon claims that card reader access systems are not effective security measure by arguing that these systems cannot track entry by collocators, nor deter tailgating.⁵² First of all, Verizon contradicted its position at the hearing by admitting that if implemented properly, card reader systems did have a preventative aspect.⁵³ Secondly, Verizon has not deployed the systems in a manner that utilizes all the features available in those systems. Though Verizon excuses its choice not to install anti-tailgating devices by stating that such devices are infeasible and impractical,⁵⁴ Qwest has found anti-tailgating devices to be quite cost-effective, efficient and useful in preventing security breaches.⁵⁵

In addition, Verizon's excuse for not implementing the "swiping out" feature of card reader systems is Verizon's overwhelming concern for collocators' ability to maintain access to the CO. Verizon states that "even the inadvertent failure of a collocator's technician to swipe his access card upon exiting the CO (*e.g.*, for lunch or to obtain a part from the truck to complete work repairing a customer trouble) would temporarily prevent that technician's return to perform further service activities in the building."⁵⁶ Yet, as the Hearing Officer noted, being locked out

⁵¹ Transcript at 40, 346-348; Qwest Initial Brief at 8-9.

⁵² Verizon Initial Brief at 46-50.

⁵³ Transcript at 14, 110.

⁵⁴ Verizon Initial Brief at 48, n. 63.

⁵⁵ Transcript at 594-595.

⁵⁶ Verizon Initial Brief at 49, *citing* Exh. VZ MA 2, at 24.

“would probably only happen to them once”.⁵⁷ Moreover, Verizon’s argument is void of logic, as the alternative Verizon proposes would be to completely prohibit access to the collocators’ technicians. Otherwise, the process for administrating a “swipe-out” feature is neither time-consuming, burdensome, nor ineffectual in monitoring access at a central office, especially if Verizon were to use available technology to centralize, organize and manage their card reader systems.⁵⁸

Be that as it may, Verizon still asserts that its plans for deploying card reader systems will be complete in 18 months.⁵⁹ Verizon is clearly planning to deploy the card reader systems in a limited manner, as the record shows that within 18 months there will only be card reader systems in 61 out of the 240 central offices in Massachusetts.⁶⁰ That is barely 25% of central offices, and only 36% of the 169 offices where collocators are currently located. This latter percentage will only decrease as competitive carriers continue to expand their networks in Massachusetts over the next 18 months. Verizon clearly has not deployed, and has no plans to deploy, card reader systems in a manner, or to the extent necessary to justify its proposal.

Likewise, Verizon claims that video surveillance is an ineffective security measure.⁶¹ Specifically, Verizon claims that video cameras do not work due to the close proximity of the competitors’ and Verizon’s equipment,⁶² yet Verizon also claims that the vast majority of competitors’ equipment was *already* segregated from Verizon’s equipment.⁶³ Furthermore, like the card reader systems, Verizon has not deployed the surveillance systems in a manner that

⁵⁷ Transcript at 288.

⁵⁸ Qwest Initial Brief at 10-12.

⁵⁹ Verizon Initial Brief at 47.

⁶⁰ Qwest-VZ-1-20, 21.

⁶¹ Verizon Initial Brief at 30, 50; Verizon Testimony at 19.

⁶² Verizon Initial Brief at 30.

⁶³ Verizon Initial Brief at 24.

allow them to be effective. In fact, Verizon does not “traditionally post security cameras”,⁶⁴ but instead deployed video surveillance as security measure in only a limited number of central offices only under limited conditions.⁶⁵ As Qwest explained, video surveillance can be significantly more effective if deployed correctly.⁶⁶ Accordingly, Verizon’s faulty implementation and enforcement of available security measures cannot justify its proposal to take away collocators’ access in the central office.

2. Verizon does not consistently utilize the available security measures.

In addition, Verizon failing to implement its own security policies consistently, or utilize its contractual authority to enforce those policies, discourages strict adherence by the collocators. Verizon claims that “collocated carriers have not consistently or diligently followed Verizon MA’s policy”.⁶⁷ Verizon blames the collocators for the failure of the security measures authorized by the Department to justify denying collocators access to COs, though Verizon has failed in its responsibility to protect the network by enforcing security in a manner that does not unnecessarily restrain the competitors’ ability to compete.⁶⁸ Indeed, Verizon declares that violators of its security procedures are subject “to removal and termination of all access privileges,”⁶⁹ but appears to have never employed this enforcement mechanism. The Hearing Officer also recognized that Verizon’s security procedures seem to be replaceable by “unwritten

⁶⁴ Transcript at 269.

⁶⁵ Verizon Initial Brief at 43. (Verizon only uses cameras “in COs with unsecured CCOE arrangements or where access to shared facilities is only available by means of unsecured open passage through Verizon MA’s equipment areas.”)

⁶⁶ Qwest Initial Brief at 22.

⁶⁷ Verizon Initial Brief at 49.

⁶⁸ *See supra* II.A.

⁶⁹ Verizon Initial Brief at 42; Verizon Direct Testimony at 17. *See also Id.* at 31 (“Verizon may escort a CLEC employee out of the CO if he/she is unauthorized or responsible for accidental or intentional damage in the CO.”); *Id.*, Attachment 1 at 3 (“Access to or attempted access to unauthorized parts of the building by CLEC personnel may result in the termination of the CRAS card access rights to ALL Verizon buildings.”); AL-VZ 1-1, Verizon’s Collocation Guidelines, 2.20 (“The CLEC agrees to . . . immediately remove and refrain from sending any such CLEC personnel to work at VZ’s facilities.”)

rules” that are less stringent than the measures that Verizon has the regulatory and contractual authority to impose.⁷⁰ While Qwest attempts to implement Verizon’s security policies and procedures fully, Qwest’s adherence is meaningless due to Verizon’s haphazard application.⁷¹

Competitive carriers would appear to be wasting their time and resources by implementing Verizon’s procedures. For example, Verizon’s policies include completing Methods of Procedures prior to entering a CO to perform work in a carriers’ collocated equipment, as well as using only contractors on the Approved Vendor Lists. Verizon claims that collocators “cause problems with office infrastructure” “due to inexperience or lack of knowledge of applicable CO standards and requirements”,⁷² because collocator technicians cannot be “held accountable” by Verizon.⁷³ Initially, this statement is illogical in its conclusion that while Verizon personnel gain familiarity with the CO equipment and configurations with experience in COs, collocator personnel do not.⁷⁴ More importantly, Verizon has contractual authority to ensure that collocators, or their contractors, entering CO are fully knowledgeable about the equipment and necessary care, and has chosen not to utilize that authority.⁷⁵ Furthermore, Verizon complains that collocators have opted to use non-approved vendors,⁷⁶ but Verizon admittedly never utilized its regulatory and contractual authority to require approved

⁷⁰ Transcript at 354.

⁷¹ Transcript at 602-603.

⁷² Verizon Initial Brief at 27, n. 40.

⁷³ Verizon Initial Brief at 29.

⁷⁴ Verizon notes that its technicians “become increasingly proficient in their job by gaining practical CO experience.” Verizon Initial Brief at 28, n. 39, n. 40. Conversely, Verizon asserts that collocators’ technicians should be excluded from the CO environment because they are “less trained or less familiar with the CO environment, and less aware of the potential incidental harm to the various types of CO equipment.” Verizon Initial Brief at 27, n. 39; Transcript at 112. Every technician will enter a central office(s) for the first time, but will become more trained and more familiar in gaining more experience.

⁷⁵ Qwest Initial Brief at 22-23.

⁷⁶ Verizon Initial Brief at 28.

vendors.⁷⁷ Verizon's decision not to utilize this authority, therefore, cannot justify hindering the collocators' ability to compete.⁷⁸

Carriers, such as Qwest, that have expended the time and effort to implement the security procedures fully should not be penalized because Verizon has chosen not to utilize their regulatory and contractual authority. Under the guise of enhancing existing security measures in Massachusetts, Verizon is attempting to transfer its responsibility to competitive carriers.⁷⁹ Being obligated to provide Verizon with authority to conduct its own background checks since collocating in Massachusetts has lead Qwest, and likely other carriers, to believe that Verizon has been conducting those checks and recovering the cost of the checks as part of its ID badge application process. For the first time, Verizon at the hearing explained that it has not utilized its authority to conduct a background check prior to issuing an identification badge to a non-employee, including collocator personnel.⁸⁰ Though not conducting the background checks, there is no indication that Verizon has not recouped costs in its charges for issuance of a badge. Despite the fact that some carriers conduct their own background checks,⁸¹ as Verizon acknowledges,⁸² their current practices may not meet the criteria set forth by Verizon in its July 2nd letter. For these reasons, the Department should not allow Verizon to shift additional burden onto the collocators to perform background checks in accordance with Verizon's choice of criteria.

In addition, Verizon wants to require collocators to conduct drug screening in accordance with Verizon's July 2, 2002 letter. Though Verizon provides no explanation of how conducting

⁷⁷ Qwest Initial Brief at 22-23.

⁷⁸ *Id.*

⁷⁹ Verizon Initial Brief at 44.

⁸⁰ Transcript at 263-265.

⁸¹ Qwest Rebuttal Testimony at 20-21.

the drug screen on a technician pursuant to Verizon’s proposal will prevent or deter terrorist activity, competitive carriers regularly conduct drug screens on their technicians.⁸³ Furthermore Verizon alleges to be “in the process” of requiring such measures for their own personnel, specifically their vendors,⁸⁴ however there is no assurance that the requirement will ever be in place. Verizon’s excuse for not have the requirement in place currently is that vendors are “responsible contractually for any harm resulting from their actions.”⁸⁵ Not only are competitive carriers also contractually responsible,⁸⁶ but they also have a business incentive to keep the network operational,⁸⁷ whereas Verizon’s vendors have the exact opposite incentive—more outages equals more hourly work. For these reasons, the Department should not allow Verizon to shift the burden of performing drug screening to collocators in accordance with Verizon’s choice of criteria.

In instituting the proposed changes from the existing practice under Verizon’s regulatory and contractual authority, Verizon attempts to push the responsibility and costs onto the collocators without the Department approval required for duplicative security measures.⁸⁸ Verizon also fails to meet its nondiscriminatory obligation to ensure that the security measures for carriers are no more burdensome than those for its own personnel.⁸⁹ For this reason, the Department should order Verizon to withdrawal its the additional security measures proposed on July 2, 2002.

⁸² Verizon Initial Brief at 44-45.

⁸³ Qwest Rebuttal Testimony at 20-21.

⁸⁴ *Id.* at 44, n. 54.

⁸⁵ *Id.*

⁸⁶ Qwest Initial Brief at 22.

⁸⁷ Qwest Initial Brief at 10 *citing* Qwest Testimony at 6 (“competitors have no incentive to jeopardize the network”).

⁸⁸ *Phase I Order* at 24-39, 59-62, *on recon.*, *Reconsideration Order* at 6-16, 66.

⁸⁹ 47 C.F.R. § 51.323(i).

C. Verizon’s Concern over Foot Traffic is a Farce.

Implementing an escort requirement, or virtual collocation, to address the only “security” concern Verizon raised over foot traffic in central offices is also illogical.⁹⁰ First, and most indicative of the discriminatory focus of the proposal, the proposal does nothing to protect CLEC equipment—from terrorists, from Verizon’s technicians, from contracted cleaning crews, from anyone wandering into the Franklin Street CO in downtown Boston.⁹¹

Second, Verizon proposes virtual collocation and required escorts as security measures in order to limit foot traffic “to only those individuals with a legitimate business need.”⁹² Collocators clearly have at least as a legitimate business need to access its equipment in Verizon’s central office, as the needs of Verizon, its cleaning crews, its plumbers, its electricians and its painters. Furthermore, Qwest explained, that despite sharing Verizon’s concerns regarding the foot traffic of collocators *years* ago, there is no evidence to support such a concern.⁹³ Instead, Qwest finds that the collocators’ legitimate business need far outweighs any outdated, unsubstantiated, illogical concern regarding foot traffic.⁹⁴

Third, Verizon claims that foot traffic from “the sheer number of collocators” “vastly increases the *probability* of accidents, mistakes, and outright wrongdoing and, therefore, the exposure to financial harm and damage to Verizon MA’s network.”⁹⁵ Since Verizon has agreed to provide adequate service to a competitor’s virtual arrangements by “matching work force with

⁹⁰ Verizon Initial Brief at 17.

⁹¹ Transcript at 604-605. It is important to note that Qwest testified that “the doors were not locked”, as discovered in a visit to the CO at 185 Franklin Street, one of the largest, most active COs in Massachusetts. Transcript at 605.

⁹² Verizon Initial Brief at 43.

⁹³ Transcript at 586-588, 590-591.

⁹⁴ *Id.*

⁹⁵ Verizon Initial Brief at 5, n. 6.

workload”,⁹⁶ there will be no decrease in foot traffic since the amount of work is not going to decrease with the equipment being virtually collocated, instead of physically collocated.⁹⁷

Verizon also acknowledges that an escort requirement “would not reduce the level of ‘foot traffic’ in Verizon MA’s COs”.⁹⁸ Moreover, the record demonstrates that incidents and outages exposing the network to financial harm and damage are significantly more likely to occur from the action of Verizon personnel, than the foot traffic of collocators.⁹⁹

Fourth, foot traffic in the central office has certainly decreased over time, and will continue to decrease. The ability of all carriers to monitor equipment remotely reduces foot traffic, because “[r]emote access is comparable to and, in some cases, can be better than ‘hands-on’ access when assessing the condition of the equipment” “to avoid the costs associated with dispatching a technician.”¹⁰⁰ As technological advancements make remote monitoring more readily and comprehensively available, foot traffic will continue to decrease. These advancements do not support Verizon’s proposal to exile collocators from central offices, but instead further undermines Verizon’s claim that foot traffic is the only potential threat to the network.

III. SANCTIONING VERIZON’S PROPOSAL WOULD BE ARBITRARY AND CAPRICIOUS.

Instead of adopting Verizon’s proposal, the Department should reprimand Verizon for taking advantage of a sincere request by the Department to determine if any measures were necessary to heighten security in light of the devastating terrorist attacks on September 11, 2002. Since Verizon refused to take the opportunity to propose a genuine proposal that might, in fact,

⁹⁶ Verizon Initial Brief at 57, n. 71; Transcript at 701-703.

⁹⁷ Transcript at 701-703.

⁹⁸ Verizon Initial Brief at 58.

⁹⁹ See *supra* II.A.

¹⁰⁰ Verizon Initial Brief at 56.

enhance network security in the central offices, the Department should reject Verizon's proposal in its entirety and defer to industry groups who are taking their responsibilities seriously, and refrain from requiring carriers to incur the cost of repeatedly litigating before the Department.¹⁰¹

Essentially, Verizon relies upon the unfortunate attacks of September 11th when convenient to its arguments, but blames the Department's request being too narrow in admitting that its analysis is faulty.¹⁰² The only incidents that Verizon has identified have no relation to terrorism, nor does Verizon not analyze how its proposal will decrease any incidents.¹⁰³ Regardless, mentioning September 11th alone does not justify hindering collocators' ability to compete in the manner Verizon's proposal will. Verizon continues to have the separate obligation to demonstrate to the Department that additional security measures are necessary, and that segregation, separation and virtual collocation are the only appropriate security measures. Verizon has not done so.¹⁰⁴

Verizon claims that "maintaining the status quo" "is unacceptable",¹⁰⁵ however Verizon has not presented any evidence or legal argument that would justify not maintaining the status quo. Nonetheless, the collocators in this proceeding did create a record that would support the Department requiring Verizon to implement and enforce the reasonable security measures already authorized by the Department. If the Department wants to further enhance network security, Qwest suggests that the Department direct all carriers, incumbent and competitors alike, to adopt and implement the guidelines released by the NRIC collaborative. By taking the steps

¹⁰¹ See Verizon Surrebuttal Testimony at 31-32.

¹⁰² *Id.* at 31.

¹⁰³ Qwest Initial Brief at 4-11.

¹⁰⁴ See *supra* I.A.

¹⁰⁵ Verizon Initial Brief at 52.

supported by the record, the Department can ensure that the consumers in Massachusetts continue to benefit not only from network security, but also a truly competitive marketplace.

CONCLUSION

For the reasons stated herein Qwest urges the Department to reject in its entirety Verizon's proposal to eliminate CLECs' right to physically collocate equipment in Verizon central offices, thus hindering CLECs' ability to offer consumers competitive services in Massachusetts. As Verizon has intentionally ignored the important objectives of the Department in this proceeding, the following Departmental actions would ensure adequate security for the telecommunications network in Massachusetts:

1. Reiterate that Verizon must satisfy its burden to demonstrate to the Department that additional measures are justified for securing its central offices;
2. Order Verizon to withdrawal the additional security measures proposed on July 2, 2002 until Verizon has met its burden;
3. Require Verizon to fully implement and efficiently utilize in Massachusetts the existing security measures sanctioned by the Department; and
4. Direct carriers to employ the definitive guidelines established by the national government and industry groups as the most proficient means for heightening security at the central office.

Respectfully submitted,

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